

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

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DAR NO. \_\_\_\_\_  
APPEALS COURT NO. 2018-P-0453

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COMMONWEALTH

v.

RICHARD SHERMAN

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DEFENDANT'S APPLICATION FOR DIRECT APPELLATE REVIEW

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APRIL 2018

### REQUEST FOR DIRECT APPELLATE REVIEW

The defendant, Richard Sherman, requests that the Supreme Judicial Court (SJC) consider his appeal on direct appellate review. As grounds therefore, the defendant asserts that his appeal raises a critical question about the elements of rape when the victim initially consents to sex with the defendant but changes her mind in the midst of intercourse. The defendant argues that, in this situation, the standard elements of rape are not sufficient to prove the crime. In addition to the standard elements, the Commonwealth must also prove that the victim communicated her withdrawal of consent to the defendant. This is an issue of first impression in the Commonwealth.

### STATEMENT OF PRIOR PROCEEDINGS

The defendant, Richard Sherman, Jr., was indicted in Essex Superior Court on three charges of rape.<sup>1</sup> (R. 1-6). The first charge alleged that the defendant inserted his finger into the victim's vagina. (R. 1-2). The second charge alleged that the defendant inserted his penis into the victim's vagina. (R. 3-4).

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<sup>1</sup> The appendix to the defendant's application will be cited by page number as (R. \_\_).

The final charge alleged that the defendant inserted his penis into the victim's mouth. (R. 5-6). The defendant was tried over the course of four days. (R. 8). The jury found the defendant guilty of the first two charges and acquitted him on the final charge. (R. 12). The trial judge sentenced the defendant to six to eight years in state prison on the second charge and imposed three years of probation on the first charge. (R. 13). The defendant filed a timely notice of appeal. (R. 13). The defendant's appeal was docketed in the Appeals Court on March 29, 2018. (R. 15).

#### STATEMENT OF FACTS

The critical issue at trial was consent. The victim testified that she did not consent to sexual intercourse with the defendant. The defendant testified that the intercourse was consensual. The events leading up to the sexual incident were largely undisputed.

##### A. The Initial Meeting.

The victim and the defendant met at Murphy's, a bar in Salem, at approximately 12:30 A.M. on October 14, 2014.<sup>2</sup> (Tr. II/40-41). They had never met each

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<sup>2</sup> The transcript of the trial will be cited by volume and page number as (Tr. \_\_/\_\_).

other before, but had numerous mutual acquaintances. (Tr. II/41 Tr. III/46-47). The two spoke for a period of time about music and other matters. (Tr. II/42; Tr. III/47-48). At some point, the victim advised the defendant that she liked girls. (Tr. II/43; Tr. III/48).

The bar closed at 1 A.M. and the bartender asked the patrons who were still present to leave. (Tr. II/42). The victim exited the bar with a group of her friends. (Tr. II/42). She smoked a cigarette with her friends outside the bar as they gradually went their separate ways. (Tr. II/42). The defendant approached the victim and asked her if she would like to hang out sometime. (Tr. III/49). The victim said that she would like to hang out with the defendant and the two exchanged phone numbers. (Tr. II/42; Tr. III/49). After exchanging numbers, the two left separately from the bar. (Tr. III/49). The victim went to get some food with one of her female friends and the defendant went to his apartment. (Tr. II/44-45; Tr. III/49-50).

The defendant texted the victim while she was getting food with her friend. (Tr. II/45-46). The following exchange occurred via text message:

DEFENDANT: I want to see you tonight. Make it happen. (1:08 A.M.)

VICTIM: That's fine. That's fine. But you just need to know that I like girls. (1:09 A.M.)

DEFENDANT: That's fine. You know that. Are you driving? (1:16 A.M.)

VICTIM: Yeah, I'm driving. (1:18 A.M.)

DEFENDANT: K. On Bridge. You want me to get condoms? (1:20 A.M.)

VICTIM: Hey, man. I'm down to chill, but I like girls. (1:22 A.M.)

DEFENDANT: K. That's cool. You know Salem? (1:23 A.M.)

VICTIM: Plus, not to sound gross, but I'm on my period. LOL. (1:24 A.M.)

DEFENDANT: It's all good. (1:27 A.M.)

DEFENDANT: Where you at? (1:27 A.M.)

DEFENDANT: Where are you at? (1:37 A.M.)

VICTIM: Bill & Bob's, LOL. Dropping Jill off. (1:39 A.M.)

DEFENDANT: K. You got GPS? If not, I'm off Lafayette, can meet you. (1:42 A.M.)

VICTIM: Yeah, man. What street? (1:43 A.M.)

DEFENDANT: 13 Clifton Ave, Apartment 2. Let me know when here. I'll come down. (1:46 A.M.)

VICTIM: Okay. Cool. (1:47 A.M.)

DEFENDANT: :)Let me know when here. (1:49 A.M.)

VICTIM: I think I'm here. (1:54 A.M.)

DEFENDANT: K. Be down. (1:55 A.M.)

(Tr. II/192-197).

At the end of this exchange, the defendant met the victim outside and they went upstairs into his apartment. (Tr. II/49). The victim and the defendant provided widely divergent testimony about what happened next.

B. The Victim's Account.

The victim testified that the two sat in the defendant's kitchen, drank a beer, and talked about music. (Tr. II/50-51). The defendant told the victim he wanted to show her an old musical record in his bedroom. (Tr. II/53). The victim followed the defendant into the room and sat at the foot of his bed. (Tr. II/53). She was looking at the defendant's records when he sat down next to her on the bed. (Tr. II/53). The defendant tried to kiss her on the cheek and she put her hand up to stop him. (Tr. II/53). The victim reiterated that she was gay and that she was "not going past just hanging out." (Tr. II/53). The defendant repeatedly apologized, but subsequently

climbed on top of the victim and pinned her to the bed using his body. (Tr. II/55-56). The defendant pulled the victim's pants to her ankles and lifted her shirt to her neck. (Tr. II/56). The victim was terrified and did not physically resist the defendant. (Tr. II/55-56). She repeatedly told the defendant to stop and ordered him to get off of her. (Tr. II/56). The defendant ignored the victim's protestations and inserted his penis into her vagina. (Tr. II/57). The defendant was in a considerable amount of pain because she was on her period and had a tampon inside her vagina. (Tr. II/57-59). The defendant next inserted his penis into the victim's mouth. (Tr. II/58). She turned her head away and the defendant inserted his fingers into her vagina. (Tr. II/58-59). The defendant then reinserted his penis into the victim's vagina. (Tr. II/59). The victim screamed for the defendant to stop and he climbed off of her. (Tr. II/59). The victim hopped off the bed, got dressed as fast as she could, and entered into the defendant's bathroom. (Tr. II/59-60).

The victim quickly exited the bathroom and moved to leave the defendant's apartment. (Tr. II/60). As she left, she observed blood on the bed, in the

kitchen, and on the defendant himself. (Tr. II/61). The defendant told the victim not to worry about the blood and asked to escort the victim to her vehicle. (Tr. II/60). The victim declined his assistance, but the defendant followed her out of the apartment anyways. (Tr. II/61). The defendant held the victim's door open and tried to kiss her goodnight. (Tr. II/61). The victim moved away from the defendant, slammed the door to her car, and drove away. (Tr. II/61).

C. The Defendant's Account.

The defendant testified that, upon entering his apartment, he conversed with the victim in the kitchen while she smoked a cigarette. (Tr. III/53-54). They talked about music, the victim's band, and what she did for a living. (Tr. III/55). The defendant eventually went to kiss the victim and she kissed him back. (Tr. III/54-55). The two kissed for a couple of minutes before the victim resumed smoking her cigarette. (Tr. III/55). When the victim finished the cigarette, she walked into the defendant's bedroom and sat on his bed. (Tr. III/56). The defendant followed the victim and they resumed kissing. (Tr. III/57). As they were kissing, the defendant touched the victim's



vagina and the victim touched the defendant's penis. (Tr. III/57). The defendant pulled down his shorts and the victim proceeded to perform oral sex. (Tr. III/57). The victim then stripped down to her underwear and lay down on the defendant's bed. (Tr. III/58-61). The defendant lay beside her and they continued kissing and touching one another. (Tr. III/61-62).

At a certain point, the victim told the defendant to "put it in her." (Tr. III/62). The defendant asked, "What about your period?" (Tr. III/63). The victim replied, "I don't care if you don't care." (Tr. III/63). The two proceeded to have intercourse for approximately the next five minutes. (Tr. III/63). The victim never resisted, struggled, or told the defendant to stop. (Tr. III/63). When intercourse was complete, the victim went into the defendant's bathroom. (Tr. III/64). The victim returned five to ten minutes later and rejoined the defendant on the side of his bed. (Tr. III/65). They resumed their initial conversation about how strange it was that they had never met before. (Tr. III/65). The victim did not appear upset during this conversation. (Tr. III/65). At the end of this conversation, the

defendant walked the victim to her car and gave her a kiss goodnight. (Tr. III/66). The defendant returned to his apartment and tried to fall asleep on his couch. (Tr. III/67).

D. The Aftermath.

After the victim left the defendant's house, she went to her parents' house in Marblehead and then to Salem Hospital. (Tr. II/64). She stated that she had been sexually assaulted and was admitted to the hospital. (Tr. II/173-174). A hospital employee notified the police. (Tr. II/174). A number of police officers arrived at the hospital shortly thereafter and spoke with the victim. (Tr. II/128).

As a result of their conversation with the victim, the police went to the defendant's apartment. (Tr. II/129). The police knocked on the door and the defendant answered. (Tr. II/133). He was wearing a tee shirt and basketball shorts. (Tr. II/134). The police asked to speak with him and the defendant let them into his apartment. (Tr. II/162). The police asked the defendant if he had met someone that night. (Tr. III/100). The defendant acknowledged that he had met the victim, but he could not remember her name. (Tr. III/100). The defendant explained that the victim had

come over to his apartment and that they had consensual sexual intercourse. (Tr. III/100). The defendant pulled down his shorts without prompting from the police and showed them that there was blood on his underwear. (Tr. III/100). The defendant next escorted the police into his bedroom and showed them a bloodstain in the middle of his bed. (Tr. II/109; Tr. III/101). After observing the bedroom, the police placed the defendant under arrest. (Tr. III/101).

E. The Trial.

After the jury was sent to deliberate, they sent back a written question for the judge. (Tr. IV/). The question read as follows:

Need clarification. Is time of penetration the start or the duration? Definition of rape - does it include if she says no in the middle of the act? In other words, is it rape if it started consensual and she changed her mind. Thank you.

(Tr. IV/6, 21).

After consultation with counsel from both sides, the judge responded as follows:

I understand your question to be can lawful sexual intercourse become unlawful at some point during the act. The answer to that is yes, if the Commonwealth proves the second element beyond a reasonable doubt; and the second element includes lack of consent and use of force or constructive force. So, legally, the answer is yes. Lawful sexual intercourse can become unlawful sexual intercourse, but remember that the Commonwealth

has to prove that second element, both portions of the second element: Lack of consent and use of force or constructive force. Okay. So I hope that is helpful. And I release you to continue your deliberations.

(Tr. IV/22).

Neither party objected to this instruction. (Tr. IV/22-23). The jury returned their verdicts shortly after returning to their deliberations. (Tr. IV/23-25).

#### ISSUE OF LAW RAISED BY THE APPEAL

The defendant's appeal asks whether the Commonwealth must prove anything beyond the standard elements of rape when the victim initially consents to intercourse but changes her mind in the midst of sex. It is the defendant's position that, in this situation, the Commonwealth must also prove that the victim communicated her withdrawal of consent to the defendant. Without proof of this element, the defendant cannot be found guilty of rape. This issue was not preserved below and therefore the standard of review asks whether the error created a substantial risk of a miscarriage of justice.

#### ARGUMENT IN SUPPORT OF THE DEFENDANT'S POSITION

The defendant's convictions must be vacated because the trial judge failed to instruct the jury

that the victim must communicate her withdrawal of consent in order for consensual intercourse to become rape. The judge instructed the jurors that consensual intercourse becomes rape if the legal elements of rape were established at any point during intercourse. Though the defendant did not object, this instruction omitted a critical element. In order for consensual intercourse to become rape, the jury must find more than the victim's withdrawal of consent. The jury must also find that the victim communicated this withdrawal of consent to the defendant. If the victim does not communicate her withdrawal of consent to the defendant, then the defendant has not committed a crime by continuing to engage in intercourse.

To establish the crime of rape, the Commonwealth "must prove beyond a reasonable doubt that the defendant committed (1) sexual intercourse (2) by force or threat of force and against the will of the victim." *Commonwealth v. Lopez*, 433 Mass. 722, 726 (2001). The second element has been interpreted "as truly encompassing two separate elements each of which must independently be satisfied." *Id.* at 727. The Commonwealth must therefore "demonstrate beyond a reasonable doubt that the defendant committed sexual

intercourse (1) by means of physical force, nonphysical, constructive force, or threats of bodily harm, either explicit or implicit, and (2) at the time of penetration, there was no consent." *Id.* at 727.

It is well established that consensual sexual intercourse can become rape if the defendant continues with intercourse after the victim has withdrawn her consent. The Appeals Court reached this conclusion in *Commonwealth v. Enimpah*, 81 Mass. App. Ct. 657 (2012). In doing so, the Court followed the rationale of nearly every other state court to consider the issue. See *State v. Baby*, 946 A.2d 463, 486 (Md. 2008) ("We hold that a woman may withdraw consent for vaginal intercourse after penetration has occurred and that, after consent has been withdrawn, the continuation of vaginal intercourse by force or the threat of force may constitute rape."); *State v. Robinson*, 496 A.2d 1067, 1069 (Me. 1985) (rejecting defendant's argument that consent to intercourse cannot be withdrawn after defendant's initial penetration); *State v. Siering*, 644 A.2d 958, 963 (Conn. App. 1994) (same); see also Sarah O. Parker, *No Means No...Sometimes: Developments in Post-Penetration Rape Law and the Need for*

*Legislative Action*, 78 Brook. L. Rev. 1067, 1074-1081 (2013) (collecting cases).

The issue presented here is whether the Commonwealth must prove that the victim communicated her withdrawal of consent to the defendant in order to prove rape in this scenario. The judge did not instruct the jurors that they had to find this evidentiary element. Instead, the judge restated the standard elements of rape: (1) sexual intercourse, (2) the use of force, and (3) lack of consent. It is the defendant's position that, contrary to the judge's instruction, satisfaction of these elements is not sufficient to establish rape when the victim initially consented to intercourse. In addition to these elements, the Commonwealth must also prove that the victim communicated her withdrawal of consent to the defendant. Omitting this element allows a defendant to be found guilty of rape for continuing to have intercourse with a person who initially consents to the intercourse, decides they no longer want to continue in the midst of intercourse, yet fails to communicate this change of heart to the defendant. The defendant cannot be held criminally culpable in this scenario, as he is simply continuing to have

intercourse with a person who initially consented and has given no indication that consent has been withdrawn.

Every court to consider this factual scenario has recognized that the victim's withdrawal of consent must be communicated to the defendant in order for the defendant to be guilty of rape. See *People v. Denbo*, 868 N.E.2d 347, 358 (Ill. App. 2007) ("Even though, subjectively, [the victim] no longer consented, her withdrawal of consent was ineffective until she communicated it to defendant in some objective manner."); *In re John Z.*, 60 P.3d 183, 186 (Cal. 2003) ("[F]orcible rape occurs when the act of sexual intercourse is accomplished against the will of the victim by force or threat of bodily injury and it is immaterial at what point the victim withdraws her consent, so long as that withdrawal is communicated to the male and he thereafter ignores it."); *State v. Bunyard*, 133 P.3d 14, 30-31 (Kan. 2006) ("[R]ape may occur even though consent was given to the initial penetration, but only if the consent is withdrawn and communicated to the defendant."); *Robinson*, 496 A.2d at 1069 (trial judge informed jury that victim had to communicate withdrawal of consent to defendant;



correctness of instruction affirmed on appeal);  
*Siering*, 644 A.2d at 961 (same as *Robinson*). The  
California judiciary has in fact promulgated a model  
jury instruction that addresses this exact scenario.  
This instruction requires the government to prove that  
the victim communicated her withdrawal of consent to  
the defendant. It reads as follows:

A woman who initially consents to an act of  
intercourse may change her mind during the act.  
If she does so, under the law, the act of  
intercourse is then committed without her consent  
if:

1. She communicated through words or acts to the  
defendant that she no longer consented to the act  
of intercourse;

2. A reasonable person would have understood that  
her words or acts expressed her lack of consent;

AND

3. The defendant forcibly continued the act of  
intercourse despite her objection.

Judicial Council of California, Criminal Jury  
Instructions, Rape § 1000 (2017).<sup>3</sup>

Even commentators who have called for increased  
prosecutions against defendants in cases involving  
withdrawn consent have recognized that the victim must

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<sup>3</sup> A copy of this instruction is included in the  
appendix to this application. (R. 16-17).

communicate her withdrawal of consent in order for the defendant to be guilty of rape.<sup>4</sup>

All of the courts and commentators cited above have recognized that the victim's initial consent to intercourse alters the legal analysis when determining if the defendant committed rape. In the standard rape case, the victim need not communicate her lack of consent to the defendant in order for the defendant to be guilty of rape. See *Commonwealth v. Caracciola*, 409

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<sup>4</sup> See Amanda O. Davis, *Clarifying the Issue of Consent: The Evolution of Post-Penetration Rape Law*, 34 Stetson L. Rev. 729, 753 (2005) ("A court in a revoked-consent case should examine the following issues: 1) whether the victim clearly communicated his or her revocation of consent; 2) whether the defendant should have understood the victim's actions or words to be a revocation; and 3) whether the defendant discontinued the intercourse within a reasonable time or compelled continuation."); Tiffany Bohn, *Yes, Then No, Means No: Current Issues, Trends, and Problems in Post-Penetration Rape*, 25 N. Ill. U. L. Rev. 151, 181 (2005) ("Principles of post-penetration rape specify that the victim of post-penetration rape be allowed to withdraw initially-granted consent to intercourse at any point after the intercourse has begun, and as long as he or she clearly communicates this revocation to the defendant, who then continues with the intercourse forcibly, the once-consensual sex is transformed into rape."); Amy McLellan, *Post-Penetration Rape: Increasing the Penalty*, 31 Santa Clara L. Rev. 779, 780 n.8 (1991) ("The woman must communicate her withdrawal of consent to the defendant. The fact that a woman changes her mind does not turn the originally consensual intercourse into rape. It is only when she communicates her withdrawal of consent to the defendant and he continues with force and against her will that a rape occurs.").

Mass. 648, 650-651 (1991) (sufficient evidence to prove rape despite fact that victim did not physically resist or otherwise communicate her lack of consent). Instead, it is the defendant's responsibility to obtain consent prior to intercourse. If consent is unclear, then the defendant should not engage in intercourse. A reasonable mistake of fact with respect to the victim's consent is no defense to rape. See *Commonwealth v. Lopez*, 433 Mass. 722, 727-728 (2001) (rejecting reasonable mistake of fact with respect to consent as a defense to rape). However, the situation is fundamentally different when the victim initially consents to intercourse, but changes her mind during the act. In this situation, it is the victim's responsibility to communicate her withdrawal of consent to the defendant. Without communication, the defendant cannot know that the victim no longer consents to intercourse.

The following example demonstrates why the victim must communicate her withdrawal of consent in this scenario:

John and Jane agree to have intercourse. At the outset, the intercourse is pleasurable for both parties. However, after a few minutes, Jane begins to experience pain. She wants to stop, but John continues to thrust with increasing force.

John's strength intimidates Jane and she does not tell him to stop. John climaxes moments later.

If only the standard elements are applied, John has committed rape because his use of physical force compelled Jane to continue with intercourse against her will. This is clearly an unjust result. John cannot be said to have committed rape unless he continued with intercourse after Jane communicated her withdrawal of consent to him. John cannot be held criminally liable for rape for his inability to read Jane's mind in the midst of consensual sexual intercourse.

The SJC should follow the lead of its sister state courts and recognize that communication of withdrawal of consent is a necessary element of rape when the victim initially consented to sexual intercourse and changed her mind during the act. Application of the standard elements of rape is not adequate in this scenario.

#### WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

This is an issue of first impression in the Commonwealth. It remains unclear how consensual sex legally becomes rape when the victim changes her mind in the midst of sex and the defendant persists with

intercourse. It is critically important that the Court provide some clarification. As the instant case and many of the cases cited above demonstrate, juries frequently raise the question as to whether initially consensually sex can become rape if the victim revokes her consent during intercourse. See *Baby*, 946 A.2d at 487-488 (jury asked whether initially consensual sex could become rape if victim changed her mind during act); *Siering*, 644 A.2d at 961 (same); *Robinson*, 496 A.2d at 1069 (same); *Bunyard*, 75 P.3d at 756 (same). Simply restating the standard instruction on the elements of rape does not sufficiently answer this question. A better answer is needed. Juries need to know how initially consensual sex can become rape; they need to know that the victim must communicate her withdrawal of consent to the defendant.

CONCLUSION

For the reasons set forth above, the Court should allow the defendant's application for direct appellate review.

Respectfully Submitted,  
RICHARD SHERMAN, JR.,  
By His Attorney,

/s/ Edward Crane /s/  
Edward Crane  
BBO# 679016  
104 Mount Auburn Street  
P.O. Box 381030  
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Dated: 4/11/18

APPENDIX TABLE OF CONTENTS

Indictments of Defendant.....	R. 1-6
Docket Sheets.....	R. 7-14
Appeals Court Docket.....	R. 15
Model Jury Instruction from California.....	R. 16-17

COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the *SUPERIOR COURT* begun and holden at Salem, within and for said County of Essex, on the first Monday of **October** in the year of our Lord two thousand fourteen.

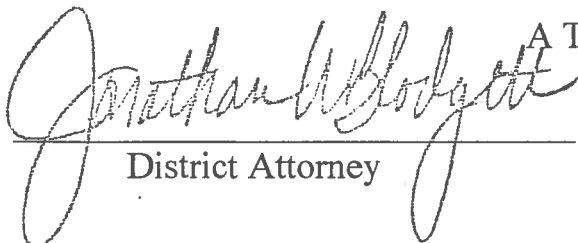
*THE JURORS* for the Commonwealth of Massachusetts upon their oath present, that

**RICHARD SHERMAN JR.**

of **Salem**, in said County of Essex, on the **fourteenth** day of **October**, in the year of our Lord **two thousand fourteen**, at **Salem** in the County of Essex aforesaid

did have sexual intercourse and/or unnatural sexual intercourse with [REDACTED] and did compel said [REDACTED] to submit by force and against her will, or by threat of bodily injury, to wit: finger in genital opening,

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
District Attorney

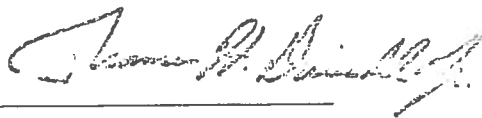
A TRUE BILL

  
Foreperson of the Grand Jury



ESSEX, ss. On this 17th day of Dec. in the year two thousand fourteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and order to be filed.

ATTEST:



DIRECT  
SALEM

ESCR2014- 1509

001

Commonwealth of Massachusetts

VERSUS

RICHARD SHERMAN JR.

Superior Court December Term, 2014

Rape

265/22(b)

DEC 11 2014

# COMMONWEALTH OF MASSACHUSETTS

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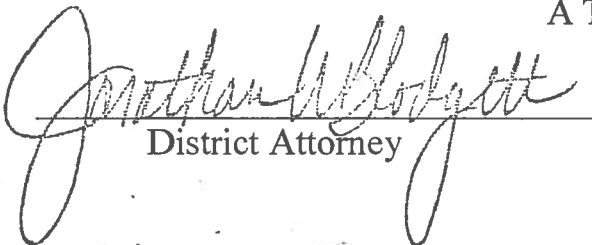
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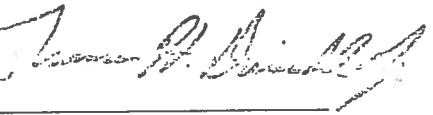
against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A TRUE BILL

  
District Attorney

  
Foreperson of the Grand Jury

ESSEX, ss. On this 11th day of Dec. in the year two thousand fourteen, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and order to be filed.

ATTEST: 

DIRECT  
SALEM

ESCR2014- 1509

002

Commonwealth of Massachusetts

VERSUS

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265/22(b)

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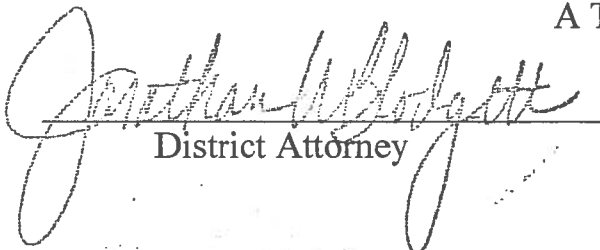
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did have sexual intercourse and/or unnatural sexual intercourse with [REDACTED] and did compel said [REDACTED] to submit by force and against her will, or by threat of bodily injury, to wit: penis into mouth,

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

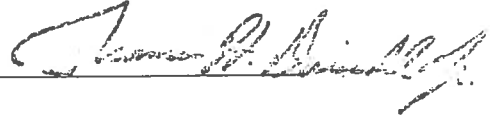
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DIRECT  
SALEM

ESCR2014- 1509

003

Commonwealth of Massachusetts

VERSUS

RICHARD SHERMAN JR.

Superior Court December Term, 2014

Rape

265/22(b)

DEC 11 2014

**1477CR01509 Commonwealth vs. Sherman, Richard Jr.**

Case Type: Indictment  
Case Status: Open  
File Date: 12/11/2014  
DCM Track: C - Most Complex  
Initiating Action: RAPE c265 §22(b)  
Status Date: 01/13/2015  
Case Judge:  
Next Event:

[All Information](#) [Party](#) [Charge](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

**Party Information****Commonwealth - Prosecutor**

Alias

**Party Attorney**

**Attorney** Sheehan, Esq., Michael J  
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**Phone Number** (978)745-6610

[More Party Information](#)

**Sherman, Richard Jr. - Defendant**

Alias

**Party Attorney**

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**Phone Number** (978)744-1220

[More Party Information](#)

**Party Charge Information****Sherman, Richard Jr. - Defendant**

Charge # 1 :

**265/22/A-1 - Felony** RAPE c265 §22(b)

**Original Charge** 265/22/A-1 RAPE c265 §22(b) (Felony)  
**Indicted Charge**  
**Amended Charge**

**Charge Disposition**

Disposition Date  
Disposition  
10/06/2017  
Guilty Verdict

**Sherman, Richard Jr. - Defendant**

Charge # 2 :

**265/22/A-1 - Felony** RAPE c265 §22(b)

**Original Charge** 265/22/A-1 RAPE c265 §22(b) (Felony)  
**Indicted Charge**  
**Amended Charge**

**Charge Disposition**

Disposition Date  
Disposition  
10/06/2017  
Guilty Verdict

**Sherman, Richard Jr. - Defendant**

Charge # 3 :

**265/22/A-1 - Felony** RAPE c265 §22(b)

**Original Charge** 265/22/A-1 RAPE c265 §22(b) (Felony)  
**Indicted Charge**  
**Amended Charge**

**Charge Disposition**

Disposition Date  
Disposition  
10/06/2017  
Not Guilty Verdict

**Events**

Date	Session	Location	Type	Event Judge	Result
01/12/2015 09:30 AM	Criminal 1 - K		Arraignment		Rescheduled
01/13/2015 09:30 AM	Criminal 1 - K		Arraignment		Held as Scheduled
03/17/2015 09:30 AM	Criminal 1 - K		Pre-Trial Conference		Held as Scheduled
04/16/2015 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Conference to Review Status	Lu, Hon. John T	Held as Scheduled
05/20/2015 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Hearing on Compliance	Lu, Hon. John T	Held as Scheduled

Date	Session	Location	Type	Event Judge	Result
07/22/2015 09:30 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Evidentiary Hearing on Suppression		Not Held
07/22/2015 12:00 PM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Evidentiary Hearing on Suppression	Lu, Hon. John T	Not Held
08/25/2015 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Trial Assignment Conference	Lu, Hon. John T	Not Held
09/15/2015 12:00 PM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Evidentiary Hearing on Suppression	Lu, Hon. John T	Not Held
10/22/2015 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Conference to Review Status	Lu, Hon. John T	Not Held
11/18/2015 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Evidentiary Hearing on Suppression	Lu, Hon. John T	Not Held
01/05/2016 09:30 AM	Criminal 1 - K		Final Pre-Trial Conference		Held as Scheduled
01/25/2016 09:30 AM	Criminal 1 - K		Jury Trial		Not Held
01/25/2016 09:30 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Jury Trial		Not Held
03/22/2016 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Conference to Review Status	Feeley, Hon. Timothy Q	Held as Scheduled
04/25/2016 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Conference to Review Status	Drechsler, Hon. Thomas	Held as Scheduled
05/10/2016 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Non-Evidentiary Hearing on Suppression	Drechsler, Hon. Thomas	Not Held
06/07/2016 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Jury Trial	Drechsler, Hon. Thomas	Not Held
06/08/2016 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Jury Trial	Drechsler, Hon. Thomas	Not Held
06/09/2016 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Jury Trial	Drechsler, Hon. Thomas	Not Held
06/13/2016 09:30 AM	Criminal 3 - I	SALEM-5th FL, CR I (SC)	Jury Trial	Lu, Hon. John T	Not Held
11/01/2016 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Jury Trial	Drechsler, Hon. Thomas	Not Held
02/28/2017 09:30 AM	Criminal 1 - K		Jury Trial		Not Held
05/23/2017 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Jury Trial	Drechsler, Hon. Thomas	Not Held
09/26/2017 09:30 AM	Criminal 1 - K	SALEM-5th FL, CR K (SC)	Jury Trial	Feeley, Hon. Timothy Q	Not Held
09/26/2017 09:30 AM	Criminal 3 - I	SALEM-5th FL, CR I (SC)	Jury Trial	Salinger, Hon. Kenneth W	Not Held
10/03/2017 09:30 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Jury Trial	Wall, Hon. Joshua	Held as Scheduled
10/04/2017 09:30 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Jury Trial	Wall, Hon. Joshua	Held as Scheduled
10/04/2017 09:30 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Jury Trial	Wall, Hon. Joshua	
10/05/2017 09:30 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Jury Trial	Wall, Hon. Joshua	Held as Scheduled
10/06/2017 09:00 AM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Jury Trial	Wall, Hon. Joshua	Held as Scheduled
10/10/2017 02:00 PM	Criminal 2 - J	SALEM-5th FL, CR J (SC)	Hearing for Sentence Imposition	Wall, Hon. Joshua	Held as scheduled

#### Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Pre-Trial Hearing	01/13/2015	01/13/2015	0	10/06/2017
Final Pre-Trial Conference	01/13/2015	12/25/2015	346	10/06/2017
Case Disposition	01/13/2015	01/08/2016	360	10/06/2017

#### Docket Information

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
12/11/2014	Indictment returned	1	
01/12/2015	Summons for arraignment issued ret 1/13/15		
01/13/2015	Deft arraigned before Court		
01/13/2015	Deft waives reading of indictment		
01/13/2015	RE Offense 1:Plea of not guilty		
01/13/2015	RE Offense 2:Plea of not guilty		
01/13/2015	RE Offense 3:Plea of not guilty		
01/13/2015	Bail same as District Court (\$15,000.00) Salem District notified	2	
01/13/2015	ORDERED: Deft placed on pre-trial probation as per 276:87 -- GPS monitoring, GPS fee waived, no contact/stay away from victim, exclusionary zone, victim/home/work/school, allowed small window of time pre-approved by CPO to seek employment (John T Lu, Justice)		
01/13/2015	Assigned to track "C" see scheduling order		
01/13/2015	Tracking deadlines Active since return date		
01/13/2015	Case Tracking scheduling order (John T Lu, Justice) mailed 1/13/2015	3	
01/13/2015	Notice of discovery filed in court	4	
01/14/2015	Appointment of Counsel Patrick J Regan,NAC #4749411-2 pursuant to Rule 53	5	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
03/17/2015	Event Result: The following event: Pre-Trial Conference scheduled for 03/17/2015 09:30 AM has been resulted as follows: Result: Held as Scheduled Appeared:		
03/17/2015	Defendant 's Motion for production of criminal offender record history or other record of criminal activity by the complainant or any witness of the Commonwealth filed in court	6	
03/17/2015	Defendant 's Motion for disclosure of prior and subsequent bad acts filed in court	7	
03/17/2015	Defendant 's Motion for victim witness advocate reports filed in court	8	
03/17/2015	Defendant 's Motion to preserve evidence filed in court	9	
03/17/2015	Defendant 's Motion for for statements of complaining witness filed in court	10	
03/17/2015	Defendant 's Motion for list of persons present filed in court	11	
03/17/2015	Defendant 's Motion for information RE: History of drug and alcohol abuse of Commonwealth witness filed in court	12	
03/17/2015	Defendant 's Motion for discovery of prospective expert testimony, physical evidence, medical evidence and scientific and forensic tests not subject to the madatory discovery requirements of MASS R CRIM P 14(a)(1)(A)(vi) filed in court	13	
03/17/2015	Defendant 's Motion for for psychiatric history of complaining witness filed in court	14	
03/17/2015	Defendant 's Motion for discovery of exculpatory evidence: any and all inconsistent statements made by complainant and other Commonwealths witness filed in court	15	
03/17/2015	Commonwealth 's Motion of court order for medical records filed in court	16	
03/17/2015	Commonwealth 's Notice of filing and request to maintain documents under seal filed in court	17	
03/17/2015	Commonwealth 's Motion for order for taking of taking of the defendants buccal DNA sample filed in court	18	
03/23/2015	General correspondence regarding Appointed Indigent Atty. of Patick J. Regan  Nac #c4749404-2  Attorney: Regan, Esq., Patrick J	19	
04/16/2015	Defendant 's Motion for funds for Medical Expert	20	
04/16/2015	Endorsement on Motion for funds , (#20.0): ALLOWED  But to the extent of \$2,000. (Feeley, J.)  Applies To: Regan, Esq., Patrick J (Attorney) on behalf of Sherman, Richard Jr. (Defendant)		
04/16/2015	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Patrick J Regan, Esq. Attorney: Michael J. Sheehan, Esq.		
04/16/2015	Event Result: The following event: Conference to Review Status scheduled for 04/16/2015 09:30 AM has been resulted as follows: Result: Held as Scheduled Appeared:		
04/27/2015	Defendant 's Motion for Disclosure and production of Medical Records of compalining witness. Filed in court 4/16/15 & Agred as to documents/records in Comm.'s possession.  Attorney: Regan, Esq., Patrick J  Applies To: Sheehan, Esq., Michael J. (Attorney) on behalf of Commonwealth (Prosecutor); Regan, Esq., Patrick J (Attorney) on behalf of Sherman, Richard Jr. (Defendant)	21	
04/27/2015	Defendant Patrick J Regan, Esq.'s Motion for Production of criminal offender record history or other record of criminal activity by teh compalinant or any witness of the Commonwealth. Filed in court 4/16/15.  Attorney: Regan, Esq., Patrick J	22	
04/27/2015	Defendant 's Motion for victim witness advocate reports. Filed in court 4/16/15 & ALLOWED, in part. commonwealth to preserve and review any, & provide any exculpatory info. (Feeley, J.)  Applies To: Regan, Esq., Patrick J (Attorney) on behalf of Sherman, Richard Jr. (Defendant)	23	
04/27/2015	Defendant 's Motion for Discovery of exculpatory evidence: Any and all inconsistent statements made by teh complanant & other Commonwealth witnesses. Filed in court & ALLOWED by agreement. 4/16/15 (Feeley, j.)	24	
04/27/2015	Patrick J Regan, Esq.'s Motion for Statements of complaining witness. Field in court 4/16/15 & DENIED as phrased. Comm. shall & has provided just comp. & police reports. (Feeley, J.) 4/16/15.  Applies To: Sheehan, Esq., Michael J. (Attorney) on behalf of Commonwealth (Prosecutor); Regan, Esq., Patrick J (Attorney) on behalf of Sherman, Richard Jr. (Defendant)	25	
04/27/2015	Defendant Patrick J Regan, Esq.'s Motion for Disclosue of prior and subsequent bad acts. Filed in court & ALLOWED 4/16/15 (Feeley, J.)  Attorney: Regan, Esq., Patrick J	26	
04/27/2015	Defendant 's Motion to Preserve evidence.;Filed in court & ALLOWED; 4/16/15;(Feeley, J.)  Applies To: Sheehan, Esq., Michael J. (Attorney) on behalf of Commonwealth (Prosecutor); Regan, Esq., Patrick J (Attorney) on behalf of Sherman, Richard Jr. (Defendant)	27	
05/20/2015	Event Result: The following event: Hearing on Compliance scheduled for 05/20/2015 09:30 AM has been resulted as follows: Result: Held as Scheduled Appeared:		



Docket Date	Docket Text	File Ref Nbr.	Image Avail.
05/20/2015	Defendant 's Motion for funds For Investigator w/ affidavit of counsel. Filed in court & ALLOWED; 5/20/15 (Feeley, J.)	28	
07/15/2015	Event Result: The following event: Evidentiary Hearing on Suppression scheduled for 07/22/2015 12:00 PM has been resulted as follows: Result: Not Held Reason: Transferred to another session Appeared:		
07/22/2015	Event Result: The following event: Evidentiary Hearing on Suppression scheduled for 07/22/2015 09:30 AM has been resulted as follows: Result: Not Held Reason: Request of Defendant Appeared:		
07/22/2015	Event Result: The following event: Trial Assignment Conference scheduled for 08/25/2015 09:30 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties Appeared:		
07/22/2015	Defendant 's Motion to suppress statements filed	30	
08/17/2015	Request for modification of conditions of Probation filed by: Defendant. Probation condition(s) revised by the court: Full time employment.  Employment window extended on 8/17/15 from 8:00AM to 2:00PM.		
09/09/2015	Event Result: The following event: Evidentiary Hearing on Suppression scheduled for 09/15/2015 12:00 PM has been resulted as follows: Result: Not Held Reason: Joint request of parties Appeared:		
09/09/2015	Event Result: The following event: Conference to Review Status scheduled for 10/22/2015 09:30 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties Appeared:		
11/12/2015	Event Result: The following event: Evidentiary Hearing on Suppression scheduled for 11/18/2015 12:00 PM has been resulted as follows: Result: Not Held Reason: Transferred to another session		
11/18/2015	Event Result: The following event: Evidentiary Hearing on Suppression scheduled for 11/18/2015 09:30 AM has been resulted as follows: Result: Not Held Reason: Request of Defendant		
01/05/2016	Event Result: The following event: Final Pre-Trial Conference scheduled for 01/05/2016 09:30 AM has been resulted as follows: Result: Held as Scheduled		
01/05/2016	Commonwealth 's Notice to Final Pre-Trial Memorandum Filed	31	
01/21/2016	Event Result: The following event: Jury Trial scheduled for 01/25/2016 09:30 AM has been resulted as follows: Result: Not Held Reason: Transferred to another session		
01/21/2016	General correspondence regarding Notice of Discovery #6., filed by the Commonwealth.	32	
01/22/2016	Commonwealth 's Notice of Discovery 2 filed	33	
01/22/2016	Commonwealth 's Notice of Discovery 3	34	
01/22/2016	Commonwealth 's Notice of Discovery 4	35	
01/22/2016	Commonwealth 's Notice of Discovery 5	36	
01/25/2016	Event Result: The following event: Jury Trial scheduled for 01/25/2016 09:30 AM has been resulted as follows: Result: Not Held Reason: Request of Defendant		
01/27/2016	Commonwealth 's Motion to continue trial allowed trial continued 6/7/16 (Feeley, J)	37	
01/28/2016	Defendant 's Motion for Psychiatric History of Complaining Witness Filed in court and DENIED (Feeley, J.) 1/27/16	38	
01/28/2016	Endorsement on Motion to continue; Affidavit of Michael J. Sheehan, (#37.0): ALLOWED Trial cont'd to 6/7/16 (Feeley, J.)		
01/28/2016	ORDER: For Medical Records from Medical Records Dept. of N.Shore Medical Ctr. to be delivered to Salem Superior Court, Clerk's Office no later than 2/16/16	39	
01/28/2016	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Patrick J Regan, Esq. Attorney: Michael J. Sheehan, Esq. Surety: Elizabeth Sherman		
02/05/2016	Medical Records received from Northshore Medical Center	40	
03/22/2016	Event Result: The following event: Conference to Review Status scheduled for 03/22/2016 09:30 AM has been resulted as follows: Result: Held as Scheduled		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/25/2016	Event Result: The following event: Conference to Review Status scheduled for 04/25/2016 09:30 AM has been resulted as follows: Result: Held as Scheduled		
05/10/2016	Event Result: The following event: Non-Evidentiary Hearing on Suppression scheduled for 05/10/2016 09:30 AM has been resulted as follows: Result: Not Held Reason: Request of Defendant No Motion to be Filed Motion Waived in Open Court		
06/07/2016	Event Result: The following event: Jury Trial scheduled for 06/07/2016 09:30 AM has been resulted as follows: Result: Not Held Reason: Not reached by Court		
06/08/2016	Event Result: The following event: Jury Trial scheduled for 06/08/2016 09:30 AM has been resulted as follows: Result: Not Held Reason: Not reached by Court		
06/09/2016	Event Result: The following event: Jury Trial scheduled for 06/09/2016 09:30 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties		
06/13/2016	Event Result: The following event: Jury Trial scheduled for 06/13/2016 09:30 AM has been resulted as follows: Result: Not Held Reason: Not reached by Court		
06/16/2016	Defendant 's Motion to continue trial allowed to 11/1/16 earliest date both counsel are available	41	
09/01/2016	Commonwealth 's Notice of Discovery #7.	42	
11/01/2016	Event Result: The following event: Jury Trial scheduled for 11/01/2016 09:30 AM has been resulted as follows: Result: Not Held Reason: Not reached by Court		
11/01/2016	Defendant 's Motion for funds for Expert	43	
11/01/2016	Endorsement on Motion for funds , (#43.0): ALLOWED		
01/26/2017	Event Result: The following event: Jury Trial scheduled for 02/28/2017 09:30 AM has been resulted as follows: Result: Not Held Reason: Request of Defendant		
01/26/2017	Defendant 's Assented to Motion to advance and continue trial date allowed (Feeley, J) continued to 5/23/17	44	
05/16/2017	Event Result: The following event: Jury Trial scheduled for 05/23/2017 09:30 AM has been resulted as follows: Result: Not Held Reason: Request of Defendant		
05/18/2017	Defendant 's Motion to continue trial filed	45	
05/18/2017	Endorsement on Motion to continue trial, (#45.0): ALLOWED		<a href="#">Image</a>
09/21/2017	Event Result: The following event: Jury Trial scheduled for 09/26/2017 09:30 AM has been resulted as follows: Result: Not Held Reason: Transferred to another session		
09/26/2017	Event Result: The following event: Jury Trial scheduled for 09/26/2017 09:30 AM has been resulted as follows: Result: Not Held Reason: Transferred to another session		
10/03/2017	Commonwealth 's Submission of statement of the case filed.	46	
10/03/2017	Witness list  filed by the Commonwealth  Applies To: Commonwealth (Prosecutor)	47	
10/03/2017	Commonwealth 's Motion in limine regarding the defendant's statement filed.	48	
10/03/2017	Commonwealth 's Motion in limine to introduce evidence of narcotics	49	
10/03/2017	Commonwealth 's Motion in limine to preclude reference to any alleged sexual activity of the victim with individuals other than the defendant filed. ALLOWED without opposition. (Joshua Wall, Justice)	50	
10/03/2017	Commonwealth 's Motion in limine to preclude reference to (1) any alleged "bad character" or "bad reputation" of the victim or witnesses and (2) any alleged "prior bad acts" of the victim and witnesses filed.	51	
10/03/2017	Commonwealth 's Motion in limine regarding first complaint ALLOWED without opposition. (Joshua Wall, Justice)	52	
10/03/2017	Commonwealth 's Motion in limine to introduce evidence of defendant's prior bad acts filed. ALLOWED without opposition. (Joshua Wall, Justice)	53	
10/03/2017	Defendant 's Submission of statement of the case filed.	54	
10/03/2017	Defendant 's Motion for individual voir dire filed.	55	
10/03/2017	Defendant 's Motion in limine to preclude Commonwealth witnesses from referring to complainant as a "victim." ALLOWED. (Joshua Wall, Justice)	56	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/03/2017	Defendant 's Motion for sequestration of witnesses filed. ALLOWED. (Joshua Wall, Justice)	57	
10/03/2017	Defendant 's Motion to limit expert testimony ALLOWED. (Joshua Wall, Justice).	58	
10/03/2017	Defendant 's Motion in limine to preclude evidence of prior bad acts filed. ALLOWED. (Joshua Wall, Justice)	59	
10/03/2017	Defendant 's Motion in limine to preclude eny evidence of drug use by either defendant or complaining witness filed.	60	
10/03/2017	Defendant 's Motion in limine to preclude that testimony of Jill Savage with regard to alleged inappropriate acts and comments by the defendant filed.	61	
10/03/2017	Impanelment of jurors on this date		
10/03/2017	Event Result: The following event: Jury Trial scheduled for 10/03/2017 09:30 AM has been resulted as follows: Result: Held as Scheduled CASE CALLED TO TRIAL; JURY SELECTED, NOT YET SWORN. (DAY 1) HEARING HELD ON MOTIONS IN LIMINE. Court Reporter: Kathy Canty		
10/03/2017	Commonwealth 's Motion in limine for individual voir dire of prospective jurors filed.	62	
10/04/2017	Event Result: The following event: Jury Trial scheduled for 10/04/2017 09:30 AM has been resulted as follows: Result: Held as Scheduled JURY "SWORN", OPENINGS AND EVIDENCE (DAY 2) Court Reporter: Kathy Canty		
10/05/2017	Event Result: Judge: Wall, Hon. Joshua The following event: Jury Trial scheduled for 10/05/2017 09:30 AM has been resulted as follows: Result: Held as Scheduled EVIDENCE CONCLUDES; CLOSINGS, CHARGE, AND DELIBERATIONS BEGIN AT 1:30 PM (DAY 3) Court Reporter: Kathy Canty  Judge: Wall, Hon. Joshua		
10/05/2017	Defendant oral motion for required finding of "not guilty" at close of Commonwealth's case "DENIED", and renewed at the close of all evidence "DENIED." (Joshua Wall, Justice)		
10/05/2017	Defendant 's Motion for requiring finding of not guilty close of Commonwealth's case "DENIED." (Joshua Wall, Justice)	69	
10/05/2017	Defendant 's Motion for requiring finding of not guilty close of all the evidence "DENIED." (Joshua Wall, Justice)	70.1	
10/06/2017	Event Result: Judge: Wall, Hon. Joshua The following event: Jury Trial scheduled for 10/06/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled DELIBERATIONS CONTINUES; JURY RETURNS VERDICTS OF "GUILTY" ON INDICTMENTS 001 & 002; "NOT GUILTY" ON INDICTMENT 003 (DAY 4). Court reporter: Kathy Canty  Judge: Wall, Hon. Joshua		
10/06/2017	The defendant\petitioner is committed without bail for the following reason: Bail has been revoked C.276 § 58. Defendant convicted on Counts 001 and 002. Continued to 10/10/17 at 2pm for sentencing  Judge: Wall, Hon. Joshua		
10/06/2017	Habeas Corpus for defendant issued to Essex County House of Correction returnable for 10/10/2017 02:00 PM Hearing for Sentence Imposition.	63	
10/06/2017	Offense Disposition:: Charge #1 RAPE c265 §22(b) On: 10/06/2017 Judge: Hon. Joshua Wall By: Jury Trial Guilty Verdict  Charge #2 RAPE c265 §22(b) On: 10/06/2017 Judge: Hon. Joshua Wall By: Jury Trial Guilty Verdict		
10/06/2017	Offense Disposition:: Charge #1 RAPE c265 §22(b) On: 10/06/2017 Judge: Hon. Joshua Wall By: Jury Trial Guilty Verdict  Charge #2 RAPE c265 §22(b) On: 10/06/2017 By: Jury Trial Guilty Verdict  Charge #3 RAPE c265 §22(b) On: 10/06/2017 Judge: Hon. Joshua Wall By: Jury Trial Not Guilty Verdict - defendant discharged on this indictment ONLY  VERDICTS RECORDED AT 12:35PM on 10/6/17		
10/06/2017	Disposed for statistical purposes		
10/10/2017	Verdict affirmed, verdict slip filed  RE 001: RAPE- "GUILTY"	64	
10/10/2017	Verdict affirmed, verdict slip filed  RE 002: RAPE - "GUILTY"	65	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
10/10/2017	Verdict affirmed, verdict slip filed RE 003: RAPE- "NOT GUILTY"	66	
10/10/2017	Memo of Trial filed	67	
10/10/2017	List of exhibits TRIAL EXHIBITS	68	
10/10/2017	Defendant sentenced:: Sentence Date: 10/10/2017 Judge: Hon. Joshua Wall Charge #: 2 RAPE c265 §22(b) State Prison Sentence Not Less Than: 6 Years, 0 Months, 0 Days Not More Than: 8 Years, 0 Months, 0 Days Committed to MCI - Cedar Junction (at Walpole) Credits 54 Days Financials: Victim/Witness Assessment on felony G.L. c. 258B, § 8. Amount \$90.00 Further Orders of the Court: Condition of probation to have no direct/indirect contact with A. Wood as ordered on Count 001 is imposed forthwith.		
10/10/2017	Issued on this date: Mitt For Sentence (First 6 charges) Sent On: 10/10/2017 15:27:57	71	
10/10/2017	Defendant notified of right of appeal to the Appellate Division of the Superior Court within ten (10) days.		
10/10/2017	Defendant notified of right of appeal to the Appeals Court within thirty (30) days.		
10/10/2017	Event Result: Judge: Wall, Hon. Joshua The following event: Hearing for Sentence Imposition scheduled for 10/10/2017 02:00 PM has been resulted as follows: Result: Held as scheduled		
10/10/2017	Defendant sentenced:: Sentence Date: 10/10/2017 Judge: Hon. Joshua Wall Charge #: 1 RAPE c265 §22(b) Served Consecutively Charge # 1  Financials: GPS fee assessed as a per day charge for a mandatory condition of probation. Amount \$5.95 Probation Fee assessed. Amount \$65.00 Probation: Risk/Need Probation Duration: 3 Years, 0 Months, 0 Days		
10/10/2017	Standard conditions of Probation apply with the following Special Conditions: Do not use Drugs or Alcohol, GPS Monitoring, Subject to random Drugs/Alcohol Testing Participate in substance abuse evaluation and follow treatment recommendations; register as a SO; participate in SO eval; stay away; no contact (direct/indirect) with victim A. Wood*(no contact imposed forthwith)  Judge: Wall, Hon. Joshua		
10/10/2017	List of jurors filed.	72	
10/16/2017	Notice of appeal from sentence to MCI - Cedar Junction (at Walpole) filed by defendant of sentence imposed on 10/10/17. (Wall, J.)	73	
10/16/2017	Notification to the Appellate Division sent.		
10/16/2017	Document:  Letter to the Appellate Division Sent On: 10/16/2017 14:44:24		
10/20/2017	Appeal for review of sentence entered at the Appellate Division: Originating Court: Essex County Receiving Court: Suffolk County Criminal Case Number: 1784AD025-ES ;		
10/27/2017	Notice of appeal filed./Motion to Withdraw and appointment of appellate counsel. copy given to (Feeley, J.) & M. Dres & E.G.  Applies To: Regan, Esq., Patrick J (Attorney) on behalf of Sherman, Richard Jr. (Defendant)	74	<a href="#">Image</a>
10/30/2017	Court Reporter Kathy Canty is hereby notified to prepare one copy of the transcript of the evidence of 10/03/2017 09:30 AM Jury Trial, 10/04/2017 09:30 AM Jury Trial, 10/05/2017 09:30 AM Jury Trial, 10/06/2017 09:00 AM Jury Trial, 10/10/2017 02:00 PM Hearing for Sentence Imposition.	75	
12/20/2017	Transcript received dated 10/10/17 from Kathy Canty, Stenographer		
02/27/2018	CD of Transcript of 10/03/2017 09:30 AM Jury Trial, 10/04/2017 09:30 AM Jury Trial, 10/05/2017 09:30 AM Jury Trial, 10/06/2017 09:00 AM Jury Trial, 10/10/2017 02:00 PM Hearing for Sentence Imposition received from Kathy Canty.	77	

### Case Disposition

Disposition	Date	Case Judge
Disposed by Jury Verdict	10/06/2017	



**APPEALS COURT**  
**Full Court Panel Case**  
Case Docket

**COMMONWEALTH vs. RICHARD SHERMAN**  
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID  
2018-P-0453

**CASE HEADER**

<b>Case Status</b>	No briefs yet	<b>Status Date</b>	03/29/2018
<b>Nature</b>	Crime: Sexual Offense	<b>Entry Date</b>	03/29/2018
<b>Sub-Nature</b>	Rape	<b>SJ Number</b>	
<b>Appellant</b>	Defendant	<b>Case Type</b>	Criminal
<b>Brief Status</b>	Awaiting blue brief	<b>Brief Due</b>	05/08/2018
<b>Panel</b>		<b>Argued/Submitted</b>	
<b>Citation</b>		<b>Decision Date</b>	
<b>Lower Court</b>	Essex Superior Court	<b>TC Number</b>	
<b>Lower Ct Judge</b>	Joshua Wall, J.	<b>TC Entry Date</b>	12/11/2014
<b>FAR Number</b>		<b>SJC Number</b>	

**INVOLVED PARTY**

**ATTORNEY APPEARANCE**

**Commonwealth**  
Plaintiff/Appellee  
Awaiting red brief

Catherine L. Semel, A.D.A.

**Richard Sherman**  
Defendant/Appellant  
Awaiting blue brief

Edward Crane, Esquire

**DOCKET ENTRIES**

<b>Entry Date</b>	<b>Paper</b>	<b>Entry Text</b>
03/29/2018		Transcript Volume: 10/03/2017 - Jury Trial
03/29/2018		Transcript Volume: 10/04/2017 - Jury Trial
03/29/2018		Transcript Volume: 10/05/2017 - Jury Trial
03/29/2018		Transcript Volume: 10/06/2017 - Jury Trial
03/29/2018		Transcript Volume: 10/10/2017 - Hearing on disposition
03/29/2018		Case partially impounded pursuant to M.G.L. c. 265, 24C
03/29/2018	#1	Lower Court Assembly of the Record Package
03/29/2018	#2	Notice of entry sent.
04/02/2018	#3	Docketing Statement filed for Richard Sherman by Attorney Edward Crane.

As of 04/02/2018 20:01

# Judicial Council of California Criminal Jury Instructions

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## CALCRIM 2017

1  
Series 100–1800



**Judicial Council of California  
Advisory Committee on Criminal Jury Instructions**

Hon. Sandy R. Kriegler, *Chair*

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[A woman who initially consents to an act of intercourse may change her mind during the act. If she does so, under the law, the act of intercourse is then committed without her consent if:

1. She communicated through words or acts to the defendant that she no longer consented to the act of intercourse;
2. A reasonable person would have understood that her words or acts expressed her lack of consent;

AND

3. The defendant forcibly continued the act of intercourse despite her objection.]

[It is not required that she physically resist or fight back in order to communicate her lack of consent.]

[Evidence that the defendant and the woman (dated/were married/had been married) is not enough by itself to constitute consent.]

[Evidence that the woman (requested/suggested/communicated) that the defendant use a condom or other birth control device is not enough by itself to constitute consent.]

[Intercourse is *accomplished by force* if a person uses enough physical force to overcome the woman's will.]

[*Duress* means a direct or implied threat of force, violence, danger, or retribution that would cause a reasonable person to do [or submit to] something that she would not do [or submit to] otherwise. When deciding whether the act was accomplished by duress, consider all the circumstances, including the woman's age and her relationship to the defendant.]

[*Retribution* is a form of payback or revenge.]

[*Menace* means a threat, statement, or act showing an intent to injure someone.]

[Intercourse is *accomplished by fear* if the woman is actually and reasonably afraid [or she is actually but unreasonably afraid and the defendant knows of her fear and takes advantage of it].]

[A woman must be alive at the time of the sexual intercourse for the crime of rape to occur.]

<Defense: Reasonable Belief in Consent>

[The defendant is not guilty of rape if he actually and reasonably believed that the woman consented to the intercourse [and actually and reasonably believed that she consented throughout the act of intercourse]. The People have the burden of proving beyond a



COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

Essex, ss.

DAR No. \_\_\_\_\_  
Appeals Court No. 2018-P-0453

\_\_\_\_\_)  
COMMONWEALTH )  
 )  
v. )  
 )  
RICHARD SHERMAN )  
\_\_\_\_\_)

CERTIFICATE OF SERVICE

I hereby certify, under the pains and penalties of perjury,  
that I have served a copy of the defendant's application for  
direct appellate review to Assistant District Attorney Catherine  
Semel, Essex County District Attorney's Office, Ten Federal  
Street, Salem, MA 01970. I have made service via email.

/s/ Edward Crane /s/  
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Dated: 4/11/18